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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,180	09/17/2003	Jeffrey Bernard Fortin	131200-1	8789

7590

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General Electric Company  
CRD Patent Docket Rm 4A59  
Bldg. K-1  
P.O. Box 8  
Schenectady, NY 12301

EXAMINER

BASICHAS, ALFRED

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/666,180

Applicant(s)

FORTIN ET AL.

Examiner

Alfred Basichas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 12-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Appeal Brief***

A detailed review of the Appeal Brief filed June 20, 2005, has revealed an oversight on the part of the examiner, for which the examiner sincerely apologizes. In responding to the After Final Amendment filed March 25, 2005, the examiner had inadvertently overlooked the fact that there were two distinct groups of Official Notice taken in the Final Rejection mailed January 26, 2005. The examiner regrets the oversight and the time and expense that applicants and applicants' representatives have expended in the filing of the Appeal Brief.

The instant office action is made non-final to make up for some of the expenditures. Further, to provide applicants with a better insight to the examiner's reasoning for the rejections and in the hopes of expediting prosecution of the instant application, the examiner has modified the rejections to rely upon the references that would have otherwise simply been cited and commented upon in response to the challenge to the Official Notice regarding plural burners and plural valves.

In the future, a telephone call relating any oversight on the examiner's part would be appreciated and would avoid further expense.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 4-6, 7, 9-14, and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charron (4,770,161) in view of Casey (6,705,533).

a. Charron discloses substantially all of the claimed limitations, including a burner system including, among other things, a gas burner 43, micro-electro-mechanical valves 37,39, and a controller with modulation (see at least col. 5, lines 4-19). Charron does not specifically recite a plurality of burners or a plurality of independently controllable valves in parallel.

b. Casey teaches a burner-valve arrangement including a plurality of burners 15 and a plurality of valves 25 arranged in parallel (see at least fig. 1). Such an arrangement has the clear and obvious benefit of providing for enhanced control of fuel flow and combustion. Casey further teaches a modulator 30 for electronically controlling the valves independently (see at least col. 6, lines 32-48). It should be noted that while Casey may not specifically recite micro-valves it is not unobvious. By definition, valves 25 are electromechanical since they are controlled by electric signals and are mechanical in that they physically restrict gas flow. Casey further recognizes that, at least as regards the thermostat and algorithms, microelectronic and electromechanical systems are functional equivalents (see at least col. 7, lines 12-23).

c. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the arrangement as taught by Casey into the invention disclosed by Charron, so as to provide for enhanced control of fuel flow and combustion because it is within the general skill of one of ordinary skill in the art to select a known structure on the basis of its suitability for the intended use.

d. It should also be noted that further rational for the motivation to combine Charron and Casey to provide for a plurality of burners and a plurality of valves, as well as it being unobvious is that it has been held that to provide duplicate parts for multiplied effect is not the type of innovation for which a patent is granted. *St. Regis Paper Co. v. Bemis Co., Inc.*, 193 USPQ 8, 11.

5. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charron (4,770,161) in view of Casey (6,705,533), which combination obviates substantially all of the claimed limitations. Nevertheless, the combination does not specifically recite the relative position of the valve to the burner. This position is an obvious modification based on design choice, and depends on spatial considerations. The lack of criticality is evidenced by the recitation of both internal and remote locations. In view of the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the invention made obvious by Charron and Casey, so as to provide for spatial considerations.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Charron (4,770,161) in view of Casey (6,705,533), which combination obviates substantially all of the claimed limitations. Nevertheless, the combination does not specifically recite an electronic interface. Official Notice is given that an electronic interface (i.e. thermostat, laptop, pc, palm pilot) is old and well known in the art. Such an arrangement has the clear and obvious benefit of providing for controlling the burner by controlling the amount of gas provided thereto. Being a heater, a wall mounted electronic thermostat

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would be well within the skill and knowledge of, if not inherent to, a skilled artisan.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate a thermostat into the invention made obvious by Charron and Casey, so as to provide for temperature control.

7. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charron (4,770,161) in view of Casey (6,705,533), which combination obviates substantially all of the claimed limitations. Nevertheless, the combination does not specifically recite the claimed range. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the claimed range into the invention made obvious by Charron in view of Casey, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

8. Claims 17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charron (4,770,161) in view of Casey (6,705,533), which combination obviates substantially all of the claimed limitations. Nevertheless, the combination does not specifically recite the use of the burner system in a cooking appliance. Official Notice is given that cooking appliances including burners with gas valves are old and well known in the art. Such an arrangement has the clear and obvious benefit of providing for controlling the burner by controlling the amount of gas provided thereto and thereby controlling the cooking rate of the culinary item. Furthermore, intended use of a known device is not something for which a patent is granted. Especially in the absence of any

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structure to facilitated the intended use. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate a thermostat into the invention made obvious by Charron and Casey, so as to provide for temperature control.

### ***Prior Art***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sutton (5,984,664) and Damrath (5,938,425) disclose gas burner systems with plural independently controlled valves in parallel with many of the claimed components. These references have been cited in response to applicants' challenge to the Official Notice no longer being applied. Further, in order to avoid overburdening applicants with redundant rejections, these references have not been applied.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 571 272 4877. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9306.




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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

August 1, 2005

  
Alfred Basicas  
Primary Examiner

  
MONICA S. CARTER  
PRIMARY EXAMINER  
Acting SPE Art Unit  
3749